



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 22, 2011

Ms. Lisa Milasky King  
Assistant District Attorney  
Collin County District Attorney's Office  
2100 Bloomdale Road, Suite 20004  
McKinney, Texas 75071

OR2011-10505

Dear Ms. King:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 424638.

The Collin County District Attorney's Office (the "district attorney") received a request for information pertaining to a specified prosecution of a named individual. You assert the submitted information is not subject to the Act. In the alternative, you claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.111 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Initially, we understand you to argue the submitted information is not subject to the Act because the district attorney maintains the file on behalf of the grand jury as their custodian. The Act does not apply to the judiciary or judicial records. Gov't Code § 552.003(1)(B); *see also id.* § 552.0035 (stating that access to judicial records is governed by Supreme Court of Texas or other applicable laws or rules). This office has determined a grand jury, for purposes of the Act, is a part of the judiciary and, therefore, is not subject to the Act. *See* Open Records Decision No. 411 (1984). Further, records kept by another person or entity acting as an agent for a grand jury are considered to be records in the constructive possession of the grand jury and therefore are not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 398 (1983). *But see* ORD 513 at 4 (defining limits of judiciary exclusion). The fact that information collected or prepared by another person or entity is submitted to the grand jury does not necessarily mean that such information is in the grand jury's constructive possession when the same information is also held in the other person's

or entity's own capacity. Information held by another person or entity but not produced at the direction of the grand jury may well be protected under one of the Act's specific exceptions to disclosure, but such information is not excluded from the reach of the Act by the judiciary exclusion. *See* ORD 513. We note some of the submitted information appears to have been created by the district attorney for its own use in the prosecution at issue. Thus, to the extent any portion of the submitted information is in the custody of the district attorney as an agent for the grand jury, these records are in the grand jury's constructive possession and are not subject to the Act. This decision does not address the public availability of such information. However, to the extent this information is not in the custody of the district attorney as an agent for the grand jury but rather is held by the district attorney in his own capacity in the course of official business, we will address your claimed exceptions to the disclosure of this information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 261.201 of the Family Code provides, in relevant part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

Fam. Code § 261.201(a), (k). Upon review, we find the submitted information was used or developed in an investigation of alleged or suspected child abuse. *See id.* § 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code), 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Accordingly, we find this information is subject to chapter 261 of the Family Code. Although the requestor is the attorney for a parent of the child victim listed in the information, we note the requestor’s client is alleged to have committed the abuse. Thus, the requestor does not have a right of access to the information at issue under section 261.201(k). *See id.* § 261.201(k). Accordingly, we conclude the submitted information is confidential in its entirety pursuant to section 261.201 of the Family Code, and the district attorney must withhold it under section 552.101 of the Government Code.<sup>1</sup>

In summary, to the extent any portion of the submitted information is in the custody of the district attorney as an agent for the grand jury, these records are in the grand jury’s constructive possession and are not subject to the Act. To the extent this information is not in the custody of the district attorney as an agent for the grand jury, the submitted information is confidential in its entirety pursuant to section 261.201 of the Family Code, and the district attorney must withhold it under section 552.101 of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/bs

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.

Ref: ID# 424638

Enc. Submitted documents

c: Requestor  
(w/o enclosures)